Index

ASSETS EXEMPT FROM SEIZURE AND SALE

common law, 187 federal, 186 provincial, 184-186

ASSIGNMENT AND PREFERENCES ACT

contrast to bankruptcy preferences, 589 fraudulent conveyance, 586 generally, 586 insolvency, 589 intention

generally, 587-688
pressure, 588
60-day rule, 588-589
unjust preferences, 587

BANK ACT SEARCH, 53

BANKRUPTCY

bankruptcy court is not a collection agency, 509 costs, 512 definition, 508 discharge, 520 effect, 518-519 financial statements, review, 510-511 forcing debtor into, 62 fraudulent preferences and fraudulent conveyances, attacking, 509-510 involuntary affidavit verifying position, 514 bankruptcy order, application, 512-515 commercial list, 512 dispute, 517-518 interim receiving order, 516-517 order, 515-516 service of application, 515 prior secured interests, 511 priority of creditors, 511 search, 54-56 s. 38 proceedings, 519-520 waste of assets, prevention, 510

BILLINGS, 30

BIRTH SEARCH, 57-58

BULK SALES ACT

repealed, vii search, 54

BURDEN REDUCTION ACT, 2017, vii

BUSINESS NAMES ACT

name search, 49-50, 285 verifying creditor's registration under, 43

CASE MANAGEMENT UNDER RULE 77, 70-72

actions to which case management does not apply, 71 criteria considered in assigning action to judge or case management master, 71 flowchart, 72 powers of judge or case management master under rule 77.04, 71

CLIENT, LAWYER COLLECTING AGAINST

assessing bill, 557-560 commencing action on bill, 557-560 generally, 553-554 retainer basis for establishing, 556 contingency fee, 556 liability for, 554-555 scope, 555-556

COLLECTION LAWYER, ROLE OF

efficient service, 24-25 fees, 26 generally, 23-24 good business practices, 25-26 sound legal judgment, 24

COLLECTION LITIGATION

account, acknowledge receipt, 42-43 amount owing, verifying, 44 bankruptcy proceedings, initiating, 62 Business Names Act, verifying creditor's registration under, 43 case management under R. 77, 70-712 commencement of proceedings, 63 court, choice of, 62-63 default judgment, 73-76

demand, 47 documents, review, 43-44 foreign currency, 46 interest, determining amount being charged, 45 judgment after trial, 78-79 judgment, obtaining, 73-79 limitation periods, 46 mandatory mediation, 73 prejudgment remedies, 61-62 regular claim, 63-66 searches, 48-60 self-help, 60-61 settlement, 79-81 simplified procedure under R. 76, 66-70 statement of claim, preparation of, 62-72 summary judgment, 76-78

COLLECTIONS, GENERALLY

debtor, knowledge of, 21 fees, 18-20 purpose, 18 role of collection lawyer, 23-26

COMMENCEMENT OF PROCEEDINGS, 63-66

CONSOLIDATION ORDERS, 307-308

CONSTRUCTION LIENS

enforcement, 494-495
extent of lien, 494
generally, 491-493
holdback, 494
procedural rules
other pleadings, 495
reference to master, 496
settlement meeting, 495
trial, 495-497
types of claimants, 493
types of property that may be liened, 494
vacating lien, 497

COPYRIGHT SEARCH, 59

COURTS OF JUSTICE ACT

foreign currency, and, 46

648 BENNETT ON COLLECTIONS

interest under, 45, 65, 283 interim order for recovery of personal property, 592 pre-judgment remedies under, 60-61 right to appoint receiver, 590-591

CREDIT SEARCH, 59

CREDITOR

advice to regarding bankruptcy
bankruptcy court is not a collection agency, 509
costs, 512
financial statements, 510-511
fraudulent preferences and fraudulent conveyances, 509-510
prior secured interests, 511
priority of creditors, 511
waste of assets, preventing, 510
preparation, instructing lawyer and, 26-27
role of, 21-23

CREDITORS' RELIEF ACT, DISTRIBUTION UNDER, 196

DEATH SEARCH, 57

DECEASED ESTATES

debtor dying before collection action commenced, 455-456 debtor dying intestate, 455 debtor dying with will, 454-455 estate trustee, 453-454 procedure to establish claim against estate commencing action in Superior Court of Justice, 457-458 continuing action, 456-457 proceeding against insolvent estate, 459 summary procedure, 458-459

DEFAULT JUDGMENT, 73-76

DEMAND LETTER, 47

DISTRESS, See LANDLORD'S RIGHT OF DISTRESS

DRIVER LICENCE SEARCH, 58

DRIVER RECORD SEARCH, 58

ENFORCEMENT

assets exempt from seizure and sale, 184-187 consolidation orders, 307-308 Creditors' Relief Act, distribution under, 196 enforcement tools, 181 garnishment, 193-196, 304-306 generally, 181, 298-300 hearing before referee, 307 judgment debtor examination, 187-192, 300-302 reciprocal enforcement of judgments, 200 sale of personal property notice of sale, 198 possession of property, 199-200 public auction, 198-199 writ of seizure and sale, 197-198, 302-303 sale of real estate notice of sale, 198 possession of land, 199 public auction, 198-199 writ of seizure and sale, 197-198, 303-304 writ of delivery, 304 writ of seizure and sale, 183-184, 197-198, 302-304

EQUITABLE EXECUTION, 589

EXECUTION SEARCH, 51-52

FEES ON COLLECTION

generally, 18-20 reasonable, 26

FISHING LICENCE SEARCH, 58

FOREIGN CURRENCY, 46

FRAUDULENT CONVEYANCES ACT

effect of transaction, 584 evidence, 586 generally, 582 intention of parties, 583-584 judgment debtor examinations, and, 188 preservation of real estate assets, 585-586 scope, 582-583 statutory presumptions, 584 when to bring action, 585

FRAUDULENT PREFERENCES AND FRAUDULENT CONVEYANCES, ATTACKING, 509-510

GARNISHMENT

garnishee's responsibilities and statement, 195 generally, 192, 304-306 hearing, 196 liability to pay, 195 notice of garnishment duration, 195 obtaining, 192-194 service, 194

HEALTH CARD SEARCH, 59

HUNTING LICENCE SEARCH, 59

INJUNCTIONS, 590-592

INTEREST, PRE- AND POSTJUDGMENT RATES, 45

INTERIM RECEIVERS, 590-592

INTERNET SEARCH, 60

JUDGMENT

default, 73-76 summary, 76-78 trial, after, 78-79

JUDGMENT DEBTOR EXAMINATION

"any other person", examination of, 189 contempt order, 191-192 costs, 191 generally, 182, 187 officer or director of corporate debtor, examination of, 188-189 questions to be asked, 192 scope of examination, 187-188 service of notice of examination, 190-191

LAND REGISTRY OFFICE SEARCH, 52-53

LAND, SALE OF

notice of sale, 198 possession of land, 199

```
public auction, 198-199
writ of seizure and sale, 197-198, 303-304
```

LANDLORD'S RIGHT OF DISTRESS

```
conditions for exercise, 614-615
defences, 625-626
generally, 61, 613-614
judicial remedies, 626-627
method
    appraisal, 623
    demand, 618
    entry, 618-619
    goods exempted from seizure, 621-623
    goods that can be seized, 620-621, 625
    impounding, 620
    notice of distress, 619-620
    other remedies, 625
    preliminary steps, 616
    sale, 623-624
    searches, 616-617
    seizure, actual or constructive, 619
    speed of distress, 624
    warrant, 618
    when right can be exercised, 625
restrictions on right to exercise, 615-616
```

LAWYER, See also COLLECTION LAWYER, ROLE OF, COLLECTION LITIGATION

billings, 30 correspondence, 29 evaluating the case, 30 first meeting with client, 27-28 follow-up instructions, 28 instruction of, 26 meetings, 28-29 opinions and correspondence, 29 pleadings and documents, review, 29 preparation of, 27 retainer basis for establishing, 556 contingency fee, 556 liability for, 554-555 scope, 555-556 role of collection lawyer, 23-26

LIMITATION PERIODS, 46

LIMITATIONS ACT, 2002

claim defined, 46 limitation period, 46, 63, 284, 583, 589

LITIGATION, See collection litigation

MANDATORY MEDIATION, 68, 73, 79

MARRIAGE SEARCH, 56-57

NAME SEARCH, 49-50

ONTARIO PHOTO CARD SEARCH, 60

PATENT SEARCH, 59

PERSONAL PROPERTY, SALE OF

notice of sale, 198 possession of property, 199-200 public auction, 198-199 writ of seizure and sale, 197-198, 302-303

PERSONAL PROPERTY SECURITY SEARCH, 50-51

PRACTICE, See also COLLECTION LITIGATION

billings, 30 correspondence, 29 electronic filing under R. 60.20, vii evaluating the case, 30 first meeting with client, 27-28 follow-up instructions, 28 instruction of, 26 meetings, 28-29 opinions and correspondence, 29 pleadings and documents, review, 29 preparation of, 27 retainer basis for establishing, 556 contingency fee, 556 liability for, 554-555 scope, 555-556 role of collection lawyer, 23-26

PRE-JUDGMENT REMEDIES, 60-61

PROCEEDINGS, COMMENCEMENT OF, 63-66

RECIPROCAL ENFORCEMENT OF JUDGMENTS, 200

REMEDIES

extraordinary

Assignment and Preferences Act, 586-589 equitable execution, 589 Fraudulent Conveyances Act, 582-586 injunctions, 590-592 interim receivers, 590-592

personal property, recovery under Rules 44 and 45, 592-594 pre-judgment, 60-61

self-help, 60-61

RIGHT OF DISTRESS, See LANDLORD'S RIGHT OF DISTRESS

RULE 44, RECOVERY OF PERSONAL PROPERTY UNDER, 593-594

RULE 45, RECOVERY OF PERSONAL PROPERTY UNDER, 594

RULE 60.20, ELECTRONIC FILING, vii

RULE 76, SIMPLIFIED PROCEDURE UNDER, 63, 66-70

RULE 77, CASE MANAGEMENT UNDER, 70-73

SEARCHES

Bank Act, 53 bankruptcy, 54-56 birth, 57-58 Bulk Sales Act, 54 copyright, 59 credit, 59 death, 57 driver licence, 58 driver record, 58 execution, 51-52 fishing licence, 58 generally, 48-49 health card, 59 hunting licence, 59

internet, 60

654 BENNETT ON COLLECTIONS

Land Registry Office, 52-53 marriage search, 56-57 name, 49-50 Ontario photo card, 60 patent, 59 permits, licences, quotas and registrations, 60 personal property security, 50-51 trade mark, 59 vehicle, owner and plate information, 58 website, 60

SELF-HELP REMEDY, 60-61

SETTLEMENT, 79-81

SIMPLIFIED PROCEDURE UNDER RULE 76, 66-70

advantages, 68-69 claim for less than \$100,000, 66 claim marginally over \$100,000, 67 enforcement of judgment, 69 flowchart, 70

60-DAY RULE UNDER ASSIGNMENT AND PREFERENCES ACT, 588

SKIP TRACER, FINDING DEBTOR FOR SERVICE OF STATEMENT OF CLAIM, 65

SMALL CLAIMS COURT

appeals, 298 claim form, completing, 283-286 consolidation orders, 307-308 counterclaim, 288-289 costs, 298 default judgment, 289-291 defence, 288-289 demand letter, 283 discovery, 292 enforcement of orders, 298-308 consolidation orders, 307-308 garnishment, 304-306 hearing before referee, 307 writ of delivery, 304 writ of seizure and sale re: land, 303-304 writ of seizure and sale re: personal property, 302-303 fees and disbursements, 287

```
garnishment, 304-306
generally, 280-281
hearing before referee, 307
jurisdiction
    monetary, 281
    territorial, 281-282
    types of action, 282-283
motions, 294-295
service of claim, 286-287
settle, offer to, 296
settlement conference, 292-294
starting the action, 283-287
summary judgment, 289-291
third party claims, 288-289
trial
    notice of, 296
    preparation, 297-298
writ of delivery, 304
writ of seizure and sale re: land, 303-304
writ of seizure and sale re: personal property, 302-303
```

STATEMENT OF CLAIM, PREPARATION

case management under Rule 77, 70-72 commencement of proceedings, 63 court, choice of, 62-63 regular claim, 63-66

SUMMARY JUDGMENT, 76-78

TRADE MARK SEARCH, 59

VEHICLE, OWNER AND PLATE INFORMATION SEARCHES, 58

WRIT OF SEIZURE AND SALE

land, 303-304 personal property, 302-303